



City of Calistoga
Planning Commission
Agenda Item Summary

DATE	November 30, 2016
ITEM	Municipal Code Amendments CMC 2016-1 Amendments to the Calistoga Municipal Code initiated by the City of Calistoga to regulate the personal cultivation of marijuana
STAFF CONTACT	Lynn Goldberg, Planning & Building Director
POTENTIAL CONFLICTS	None
RECOMMENDATION	Recommend to the City Council approval of amendments to the Calistoga Municipal Code
SUGGESTED MOTION	"I move that the Planning Commission adopt a resolution recommending to the City Council approval of amendments to the Municipal Code to regulate the personal cultivation of marijuana"

CALISTOGA PLANNING COMMISSION
STAFF REPORT

To: Chairman Coates and Members of the Planning Commission
From: Lynn Goldberg, Planning & Building Director
Meeting Date: November 30, 2016
Subject: **Municipal Code Amendments Related to New State Marijuana Regulations (MCA 2016-1)**

1 **ITEM**

2 Amendments to the Calistoga Municipal Code initiated by the City of Calistoga to
3 regulate the personal cultivation of marijuana

4 **BACKGROUND**

5 In 2011, the City Council amended the Calistoga Municipal Code to prohibit medical
6 marijuana dispensaries in all zoning districts (with exceptions for certain health care
7 facilities).

8 In response to the passage of “The Medical Marijuana Regulation and Safety Act” in
9 October 2015, the City Council adopted Ordinance No. 721, which prohibited any form
10 of marijuana cultivation within the city limits.

11 On November 8, 2016, California voters passed Proposition 64, the Control, Regulate,
12 and Tax Adult Use of Marijuana Act (“AUMA”), which legalizes and regulates
13 recreational marijuana in California. (It does not affect the medical marijuana regulations
14 that were adopted in 2015.) It is anticipated that the State will begin issuing licenses for
15 the retail sale of recreational marijuana in 2018.

16 The City retains the ability to completely prohibit commercial marijuana businesses and
17 private outdoor cultivation if it so chooses¹. However, the AUMA imposes certain
18 restrictions on local police power with regard to private cultivation of up to six marijuana
19 plants in residences.

20 On November 15, the City Council directed staff to initiate appropriate Municipal Code
21 amendments to regulate the cultivation of marijuana at a private residence due to
22 concerns related to safety and off-site impacts. The Council also affirmed its opposition
23 to allowing marijuana dispensaries in the city and is not supportive of pursuing retail
24 sales of recreational marijuana at this time.

25 **PROPOSED CODE AMENDMENTS**

26 CMC Title 8 (Health and Safety) Chapter 8.30 and Title 17 (Zoning) Chapter 17.48
27 currently prohibit medical marijuana dispensaries, commercial cannabis activities and
28 the cultivation of marijuana/cannabis in all zoning districts.

¹ Until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law, at which time the City will only be able to reasonably regulate private outdoor cultivation of six plants or less.

29 At a minimum, the following amendments to CMC Chapters 8.30 and 17.48 are needed
30 in order to maintain consistency with state law.

31 • **The definition of “marijuana” needs to be broadened** to delete the exception
32 for various parts of the marijuana plant and marijuana plant derivatives.

33 • **The prohibition of any form of marijuana cultivation needs to be revised**
34 because it is now lawful for individuals 21 years and older to plant, cultivate,
35 harvest, dry or process up to six living marijuana plants for personal, non-medical
36 use. The City must allow such private cultivation within a residence or within a
37 fully-enclosed and secured residential accessory structure subject to reasonable
38 local regulations. This provision of the AUMA went into effect immediately.

39 However, the AUMA provides that any living plants and marijuana produced by
40 the plants in excess of one ounce must be in a locked space and not visible by
41 normal unaided vision from a public place. Furthermore, in order to avoid a
42 situation in which there are multiple marijuana users within a residence and
43 establish a large grow operation, the AUMA provides that no more than six living
44 plants may be planted, cultivated, harvested, dried, or processed within a *single*
45 *residence* or upon the grounds of that residence at one time.

46 Aside from the requirements for allowing the mandated activities described above,
47 under the AUMA, the City can “enact and enforce reasonable regulations that
48 reasonably regulate” personal cultivation of six or fewer marijuana plants.

49 The following regulations are proposed in order to minimize the potentially negative
50 impacts of personal marijuana cultivation at residences.

51 • Cultivation within garages Growing plants in garages would be prohibited unless
52 it can be demonstrated that the property otherwise complies with the Zoning
53 Code’s minimum parking standards.

54 • Extraction methods The use of compressed, flammable gas, such as butane, as
55 a solvent in the extraction of tetrahydrocannabinol (THC) or other cannabinoids
56 would be prohibited due to safety concerns.

57 • Use of supplemental carbon dioxide The use of supplemental carbon dioxide to
58 increase plant yields would be prohibited. Marijuana growers sometimes use
59 pressurized tanks or carbon dioxide generators that utilize propane or natural
60 gas. At high levels, carbon dioxide inhibits the blood’s ability to transport oxygen
61 to vital body organs, and improper use has the potential for significant health
62 impacts. Additionally, there is a danger of compressed carbon dioxide cylinders
63 exploding during a fire and there are safety hazards associated with propane
64 cylinders used to power carbon dioxide generators.

65 • Use of ozone generators Likewise, the use of ozone generators in the cultivation
66 of marijuana would be prohibited. Ozone generators can produce indoor ozone
67 levels that are several times the state outdoor health standard. Such high
68 concentrations are not typically used in grow operations; however, mechanical

69 malfunctions or user error can occur and cause a sudden and rapid increase in
70 ozone levels to unhealthy levels.

- 71 • Exterior impacts Odors and light pollution that are associated with cultivation and
72 are discernible beyond a residential property's or residence's boundaries would
73 be prohibited.

74 Staff does not recommend, and the City Council did not support, amendments that
75 require the following:

- 76 • Cultivation permit The AUMA is silent on whether the City may require a permit
77 to cultivate marijuana within a residence in order to ensure that the City's health
78 and safety codes, as well as any of the requirements described above, are
79 complied with. Requiring such a permit would necessitate the payment of a fee to
80 cover staff processing costs and an inspection of the premises by Building or Fire
81 Department staff. Furthermore, it would likely be necessary to require an annual
82 renewal process to ensure continued compliance. Staff believes that the City's
83 code enforcement program can adequately deal with complaints about potential
84 violations and therefore does not recommend requiring a cultivation permit.
- 85 • Electrical limitations Six plants can typically be grown with lighting and
86 ventilation systems of a size and scale that are generally compatible with a
87 typical dwelling unit's existing electrical systems without requiring upgrades. The
88 imposition of limitations on grow lamp wattage maximum is therefore not
89 recommended due to the many different types of lamps, varying wattage
90 requirements and evolving technologies.

91 ENVIRONMENTAL REVIEW

92 The proposed Municipal Code amendments have been reviewed in accordance with the
93 California Environmental Quality Act. CEQA Guidelines Section 15061(b)(3), the
94 "general rule" exemption, states that where it can be seen with certainty that there is no
95 possibility that the activity in question may have a significant effect on the environment,
96 the activity is exempt from CEQA. The City has determined that the proposed limitations
97 on marijuana/cannabis cultivation will not have an impact on the environment and are
98 therefore exempt from CEQA under the general rule.

99 RECOMMENDATION

100 Adopt a resolution recommending to the City Council approval of amendments to the
101 Calistoga Municipal Code to regulate the personal cultivation of marijuana.

102 PUBLIC COMMENTS

103 A letter has been submitted in support of the City banning outdoor cultivation
104 (Attachment 2).

105 ATTACHMENT

- 106 1. Draft resolution
- 107 2. Letter from Scott Atkinson dated November 19, 2016